LIBRARY
SUPREME COURT, U. S.

RECEIVED
FEB 8 1968
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
FEB 9 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1967

No. 1095

JOHN J. GANNON, Individually and as President of INDEPENDENT WATCHMEN'S ASSOCIATION,

Petitioner,

—against—

ENRIQUE NAVARRO, Individually and as President of LOCAL 2 of INTERNATIONAL UNION OF POLICE AND PROTECTION EMPLOYEES-INDEPENDENT WATCHMEN'S ASSOCIATION, and on Behalf of All Members Similarly Situated,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

WILFRED L. DAVIS
Counsel for Petitioner
250 Broadway
New York, N. Y. 10007

INDEX

	PAGE
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	3
Statement	3
Reasons for Granting the Writ	4
Conclusion	9
Appendix:	
Opinion, Court of Appeals	App. 1
Judgment and Order, Court of Appeals	App. 18

Table of Cases Cited

Calhoon v. Harvey, 379 U.S. 134 (1964)	4, 5
Coleman v. Brotherhood of Railway and Steamship Clerks, 340 F.2d 206 (2nd Cir. 1965)	5, 6
Gurton v. Arons, 339 F.2d 371 (2nd Cir. 1964)	5, 6, 7
Longshoremen v. Marine Trade Association, 389 U.S. 64 (1967)	8
Robins v. Rarbach, 375 F.2d 929 (2nd Cir. 1963)	5

PAGE

Yanity v. Benware, 276 F.2d 197 (2 CA April, 1967) 6, 7

Tucker v. Shaw, —— Fed. 2d —— (2nd Cir. 1967) 7

OTHER AUTHORITIES CITED

Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 et seq.:

§412 2

§411(a)(1) 2, 3, 4

§411(a)(2) 2, 3, 6, 7

28 U.S.C. 1254(1) 2

IN THE

Supreme Court of the United States

October Term, 1967

No. ———

JOHN J. GANNON, Individually and as President of INDEPENDENT WATCHMEN'S ASSOCIATION,

Petitioner,

—against—

ENRIQUE NAVARRO, Individually and as President of LOCAL 2 of INTERNATIONAL UNION OF POLICE AND PROTECTION EMPLOYEES-INDEPENDENT WATCHMEN'S ASSOCIATION, and on Behalf of All Members Similarly Situated,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States

Petitioner is John J. Gannon, individually and as president of Independent Watchmen's Association.

Respondent is Enrique Navarro, individually and as president of Local 2 of International Union of Police and Protection Employees-Independent Watchmen's Association, and on behalf of all members similarly situated.

Petitioner prays that a writ of certiorari issue to review a judgment and order of the United States Court of Appeals for the Second Circuit entered in the above entitled

proceeding on November 20, 1967 which order affirmed an order of the United States District Court for the Southern District of New York, granting the motion of respondent for a preliminary injunction under Section 102 of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 412, restraining defendants from interfering with meetings of respondent's local union.

Opinion Below

The opinion of the Court of Appeals, per Lumbard, Ch. J., is reported at —— F.2d —— and may be found in the appendix at page 1.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1). The order of the Court of Appeals was entered on November 20, 1967, and may be found in the appendix at page 18.

Questions Presented

1. Whether the guaranty of the right in §101 (a)(1) and (2) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. 401 *et seq.* to meet, assemble and discuss matters properly before a union meeting justifies injunctive relief against threatened supervision of a local union's meeting by representatives of a parent labor organization short of imposing a trusteeship.

2. Should the Court decide the first question in the affirmative, may such injunctive relief be had when the issues are presented only in general terms, there is no factual development of any specific threatened danger to any right to vote or hold a meeting and the only specific evidence in

support of the application is a letter written to all local union members containing only reasoned discussion without threats of discipline.

Statute Involved

The statute involved is the Labor Management Reporting and Disclosure Act, 29 U.S.C. 401 et seq. particularly section 411 which appears in footnote 1 of the Opinion and may be found in the appendix at pages 2-3.

Statement

In a letter to the members of Local 2 dated February 9, 1967, petitioner indicated awareness of "problems which have existed within your local," referred to calls from rank and file members of the local and the International's desire to furnish information. The problems were stated to be the desire of some members to disaffiliate from the international, attempts to change the welfare insurer and the local's counsel. Provision was made for international officers to preside at the meeting. The letter concluded, "The International urges you to attend the Local 2 meeting called for February 19, 1967 and take proper steps to protect your interests."

Nowhere in the papers is there any statement that any particular matters were to be discussed or presented for action at the regular meeting of February 19, 1967. Nor do any threats by defendant of discipline or any other kind appear.

Article IX of the Constitution of the I.W.A. gave the international president "other and further powers in addition to those herein enumerated and shall perform such other and further duties as are usual to his office and as are

performed by the president in accordance with the practices of the I.W.A." Such practices are shown to have included taking action to have international officers preside at a local's meeting. This had been done during 1965 in Local 2.

A temporary restraining order was granted in the District Court on February 16, 1967 and a Court of Appeals judge refused to vacate such temporary restraining order on February 17, 1967. The meeting was held on February 19, 1967 without international officers in attendance and was presided over by local officers. The preliminary injunction was heard thereafter and granted after argument. The Court of Appeals affirmed granting of the preliminary injunction.

Reasons for Granting the Writ

1.

The Court of Appeals holding is "that the LMRDA secures the right of union members to meet without interference from the international union except where the parent organization acts in accordance with lawfully established procedures to institute a trusteeship over the local union." This holding, characterized by the Court of Appeals as "an important question under the Labor Management Reporting and Disclosure Act", creates a situation where a parent body is prohibited from acting toward its locals except in the most drastic manner. Persuasion and orderly discussion are apparently outlawed if exercised by a parent union. On the other hand the parent is encouraged to take action to prevent almost completely the exercise of almost any local autonomy.

This Court has held, *Calhoon* v. *Harvey*, 379 U.S. 134 (1964), that the 101 (a) (1) guarantees do not vest in mem-

bers any right to unrestricted nomination to union office. As glossed in the very court of which review is sought, *Calhoon* mandates that the Labor Management Reporting & Disclosure Act provides no jurisdiction for United States Court to interfere unduly in union affairs. Rights are given by the statute to union members, but these rights must be directly attacked to justify court interference. *Cf. Gurton* v. *Arons*, 339 F.2d 371 (2nd Cir. 1964); *Robins* v. *Rarbach*, 375 F. 2d 929 (2nd Cir. 1963); *Coleman* v. *Brotherhood of Railway and Steamship Clerks*, 340 F. 2d 206 (2nd Cir. 1965).

Judge Hays in *Gurton* expressed the proper construction of *Calhoun* when he said (339 F. 2d at 374-375):

> "But the guaranty of the equal right to vote is surely not a general commission for the federal courts to review the constitution and by-laws of the union. As long as no claim is made that provisions of the constitution and by-laws are being applied in such a way as to deny equality in voting, there is nothing in Section 101 which authorized consideration of those documents.
>
> • • •
>
> "The provisions of the L.M.R.D.A. were not intended by Congress to constitute an invitation to the courts to intervene at will in the internal affairs of unions. Courts have no special expertise in the operation of unions which would justify a broad power to interfere. The internal operations of unions are to be left to the officials chosen by the members to manage those operations except in the very limited instances expressly provided by the Act. The conviction of some judges that they are better able to administer a union's affairs than the elected officials is wholly without foundation. Most unions are honestly and efficiently administered

> and are much more likely to continue to be so if they are free from officious intermeddling by the courts. General supervision of unions by the courts would not contribute to the betterment of the unions or their members or to the cause of labor-management relations."

See also *Coleman* v. *Brotherhood of Railway and Steamship Clerks,* 340 F. 2d 206 at 208 (2nd Cir. 1965); *Yanity* v. *Benware,* 376 F. 2d 197 (2 CA April, 1967).

No matter is shown to have been before the local to be voted on so that the right to vote equally or otherwise could not have been interfered with. Nor did any action of defendant indicate even any desire to interfere with any member's right to vote. The members were urged only "to attend" and "take proper steps to protect your interests". The only action taken by defendant was to furnish information and to provide for an orderly discussion by having international officers preside in accord with past practice: Perhaps this action was beyond the specific powers granted in the union constitution (it was not specifically prohibited), but the observance of the union constitution was not before the Court, only specific rights granted by statute and not shown to have been infringed.

The legislative history of LMRDA as set forth in the opinion below gives very little help on whether the question of who shall preside at a local meeting is one of the rights protected. The Court below recognized that the right of assembly protected by the statute was chiefly concerned with the right to confer outside regular meetings rather than with conduct at meetings. The Court below admits that in applying section 101 (a) (2) guarantees to this case it acts without any express indication of congressional

intent. It must be added that it likewise acts without any clear language in the act to this effect.

The Second Circuit previously held in *Yanity, supra,* that the right to meet and assemble freely under section 101 (a) (2) of the Act does not create a right of the membership to have meetings called. In this case it has held that the statutory right "necessarily encompass the right to assemble, consult and decide matters of concern to the local union without the inhibiting presence and control of international officials." A local member thus has a right to a particular presiding officer at a meeting which he could not have ordered called.

The Second Circuit has held in *Tucker* v. *Shaw,* —— Fed. 2d —— (1967), that when rights of the local against its officers were in question, a clear conflict arose justifying the exclusion of local counsel from the meeting. A similar situation might well have been presented at the February 19th meeting and dispassionate, disinterested international officers presiding might have been preferable to local officers who possibly would come under attack if there were really free discussion.

In *Gurton, supra,* the Second Circuit upheld the action of the executive board in setting aside a vote taken at a meeting without finding any violation of a member's statutorily guaranteed rights.

These examples as contrasted with the present case show what fine lines must be drawn as to what is and what is not interference in union affairs by the courts. A much sounder rule would be to prohibit interference by the courts except when it is shown that the statutory right of a member is being directly interfered with and thus avoid the necessity of hair line distinctions.

2.

Running through the court's opinion are various pejorative characterizations of defendant's acts. It is stated, among other instances, that "the Local meeting is taken over by the International". (Appendix 11) Again "the officers of Local 2 may not be shunted aside" (Appendix 11). The "elected officers of the local" are contrasted to "hostile outsiders" (Appendix 12). The object of the proceeding is said to be that "that the members be free from inhibiting controls imposed on their meeting from without" (Appendix 14).

All these epithets, if correct, might justify court action. They seem inflated out of all proportion when the only action involved was the writing of a letter which sought merely to stimulate (rather than suppress) discussion. The court's misunderstanding of what took place is due to the fact that there is before it no proof of any act whatsoever on the part of defendant except the writing of a letter. The rest of the papers are made up only of conclusions without any evidentiary matter in support thereof.

The Court has this term in *Longshoremen* v. *Marine Trade Association*, 389 U.S. 64 (1967) reversed a decree of injunction as too vague to be understood. Certainly it should not permit an injunction enforceable by contempt to stand when it is based on merely conclusory language which does not set forth any specific act complained of, and into which language horrendous meanings may be read that quite possibly are not supportable.

CONCLUSION

For the reasons set forth above it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

WILFRED L. DAVIS
Counsel for Petitioner